

POLLY ROARK,)
)
Plaintiff,)
)
v.) Case No. _____
)
UNIVERSAL FIBERS, INC.)
ASSOCIATES SAVINGS PLAN,)
)
Defendant.)

Polly Roark, by counsel, files this Complaint against Defendant Universal Fibers, Inc. Associates Savings Plan (the “Plan”), and states as follows:

THE PARTIES

1. Polly Roark is an adult citizen of the Commonwealth of Virginia, residing at 7126 Reedy Creek Road, Bristol, Virginia 24202.

2. The Plan is an employee benefit plan established pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 1001 et seq. (“ERISA”). As an ERISA plan, the Plan is a distinct legal entity vested with the capacity to sue and be sued. The Plan is administered at 14401 Industrial Park Road, Bristol, Virginia 24202.

JURISDICTION AND VENUE

3. This Court has independent federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 29 U.S.C. § 1132 because it concerns entitlement to benefits under a 401(k) plan, which is an employee benefit plan governed by ERISA.

4. Venue is proper under 28 U.S.C. § 1391 because both parties reside in this jurisdiction and the events giving rise to this action occurred in this jurisdiction.

FACTS

5. Steven Roark was employed by Prisma Fibers, Inc. from April 1, 1990 to December 4, 1999. During his employment with Prisma Fibers, Inc., he was unmarried.

6. As an employee of Prisma Fibers, Inc., Steven Roark participated in the 401(k) plan administered by Prisma Fibers, Inc. Associates Savings Plan.

7. On May 31, 1995, Steven Roark designated his parents, Robert Roark and Joan Roark, as his 401(k) plan beneficiaries. He never updated this beneficiary designation.

8. Prisma Fibers, Inc. is now operating as Universal Fibers, Inc., a Virginia corporation with its principal office at 14401 Industrial Park Road, Bristol, Virginia 24202. The Prisma Fibers, Inc. Associates Savings Plan is now operating as the Universal Fibers, Inc. Associates Savings Plan, at the same location.

9. On March 10, 2000, Steven Roark married Polly Roark.

10. On February 2, 2012, Steven Roark died. At the time of his death, Steven Roark was married to Polly Roark, as indicated on his Certificate of Death, attached as Exhibit A.

11. ERISA, at 29 U.S.C. § 1055, provides that a surviving spouse is entitled to a plan participant's 401(k) benefits and may only waive this right by consenting in writing to the election of a different beneficiary.

12. Consistent with ERISA, Article VI of the Prisma Fibers, Inc. Associates Savings Plan Summary Plan Description provides in pertinent part:

If you are married at the time of your death, your spouse will be the beneficiary of the entire death benefit unless an election is made to change the beneficiary. IF YOU WISH TO DESIGNATE A BENEFICIARY OTHER THAN YOUR SPOUSE, YOUR SPOUSE MUST IRREVOCABLY CONSENT TO WAIVE ANY RIGHT TO THE PORTION OF THE DEATH BENEFIT PAYABLE TO YOUR SPOUSE. YOUR SPOUSE'S CONSENT MUST BE IN WRITING, BE WITNESSED BY A NOTARY OR A PLAN REPRESENTATIVE, AND ACKNOWLEDGE THE SPECIFIC NON-SPOUSE BENEFICIARY.

(Emphasis in original.) The Summary Plan Description is attached as Exhibit B.

13. The Plan never received any written consent from Polly Roark waiving her right to Steven Roark's 401(k) death benefit.

14. After Steven Roark's death, the Plan paid out a 401(k) death benefit of \$54,257.90 to Robert Roark and Joan Roark.

15. Under ERISA and the terms of the Plan, Polly Roark is the rightful beneficiary of Steven Roark's 401(k) death benefit.

16. On June 14, 2013, the Plan acknowledged by letter from Judy Shumate, Human Resources Representative, that:

“[A]s Steven's surviving spouse, we need to inform you of the rights given to you by a federal law (ERISA). The Employee Retirement Income Security Act (ERISA) governs 401(k) employee savings plans. ERISA rules and guidelines require that a surviving spouse has the primary right to any assets in the account, unless the spouse has signed a waiver consenting in writing to the naming of anyone other than the spouse as primary beneficiary. No such waiver was produced. Accordingly, the 401(k) funds actually belong to you, Steven's spouse.

The letter is attached as Exhibit C.

17. Although it acknowledged that Polly Roark is the beneficiary of Steven Roark's 401(k), the Plan has not paid to Polly Roark the benefits to which she is entitled under federal law and the plan documents.

COUNT ONE RECOVERY OF BENEFITS

18. Paragraphs 1-17 of the Complaint are incorporated herein.

19. Pursuant to ERISA, at 29 U.S.C. § 1132(a)(1)(B), and to the terms of the Plan, Polly Roark is entitled to recover Steven Roark's 401(k) death benefit from the Plan.

20. Polly Roark is entitled to pre-judgment and post-judgment interest on Steven Roark's 401(k) death benefit at the highest legal rate until paid.

**COUNT TWO
ATTORNEY'S FEES AND COSTS**

21. Paragraphs 1-20 of the Complaint are incorporated herein.

22. Pursuant to ERISA, at 29 U.S.C. § 1132(g)(1), Polly Roark is entitled to recover her attorney's fees and costs incurred in enforcing her right to recover Steven Roark's 401(k) death benefit.

WHEREFORE, Polly Roark requests that the Court enter judgment against the Plan in the amount of Steven Roark's 401(k) death benefit of \$54,257.90 plus pre-judgment interest, post-judgment interest, her attorney's fees and costs, and such other relief as the Court deems just and proper.

Respectfully submitted,

POLLY ROARK

By: /s Sheri A. Hiter
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